

NTSB Order No. EA-3911

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 7th day of June, 1993

Respondent.

OPINION AND ORDER

6092

On September 17, 1989, respondent was pilot-in-command of his Lockheed T-33A, at an aircraft display being held at Ellis Airport, Jacksonville, NC.³ At the request of the airport manager, Douglas Barrett, and with Mr. Barrett aboard acting as a "safety observer," respondent took off from the field, and performed a short flight in the area. As pertinent on appeal, the Administrator's complaint alleges that, when respondent attempted to land, he failed to ensure that the landing gear was down and in the locked position. On touchdown, the aircraft was damaged, but respondent was able to recover altitude and, on the next attempt, landed without further incident.⁴ According to the Administrator, respondent violated 14 C.F.R. 91.9 (now 91.13(a)), which prohibits operation of an aircraft in a careless or reckless manner so as to endanger the life or property of another. Respondent countered that the gear-up touchdown was the result of malfunctioning of the landing gear and that the gear handle was in the down position.

The law judge found, as a matter of fact, that there were
(..continued)
to respondent's Answer to the complaint, see Tr. at 146) that respondent timely filed an Aviation Safety Reporting System report.

³Despite the law judge's statement suggesting the complaint did not reflect the correct aircraft number (see Tr. at 186), respondent does not so argue.

⁴The gear-up landing was actually the second landing attempt. On the first try, another aircraft caused respondent to perform a go around. Tr. at 120. After the gear-up touchdown, respondent sought the assistance of the Unicom operator regarding the condition of the underside of his aircraft. Respondent was informed that the aircraft looked normal. Tr. at 125.

three "systems" involved that day: the landing gear system; the landing gear indicator system;⁵ and the landing gear warning system.⁶ Tr. at 191. The warning alarm horn malfunctioned that day. Tr. at 191 and Exhibit R-3. But, the law judge noted, there was no evidence that either the landing gear or the landing gear indicator had malfunctioned. Moreover, the law judge took special note of Mr. Barrett's testimony that he could not tell if the landing gear was down and could not recall how the cockpit instrument indicated that the gear was up or down.⁷ The law judge concluded it more probably true than not true that respondent "inadvertently forgot" to put the gear down, and on this basis found that respondent had been careless. Tr. at 191.

On appeal, respondent argues that the law judge's carelessness finding is arbitrary and capricious because the evidence does not support that finding. To substantiate this charge, respondent contends that all of the evidence shows that he executed a proper approach and landing.

In making this argument, however, respondent ignores that the proof of his failure to put the gear down itself provides an evidentiary basis for a finding of carelessness, and he incorrectly suggests that Mr. Barrett's testimony confirmed

⁵I.e., a cockpit instrument that showed whether the gear was up or down.

⁶I.e., an alarm that would go off below a certain engine power setting if the landing gear was not down.

⁷Tr. at 50-53. This was a trainer aircraft and Mr. Barrett had the same instrumentation at his seat as respondent.

respondent's testimony that the landing gear indicator showed that the gear was down. We cannot find it error for the law judge to reject respondent's unsupported testimony in the face of a lack of evidence that either the landing gear itself or the landing gear indicator was not working properly at the time.⁸ And, we agree with the law judge that failure of the warning alarm does not excuse the violation.

Given the law judge's finding that respondent forgot to put down the landing gear, we cannot agree with respondent's contention that he acted with all due care. Irrespective of the amount of damage actually done to the aircraft (an issue disputed in the record and not resolved by the law judge), the inherent danger in a failure to lower landing gear supports a § 91.9 finding.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's appeal is denied.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁸We do not mean to suggest that, had the landing gear indicator also been malfunctioning, we would dismiss the complaint. We leave that question for the appropriate case.